

FEDERAL COMMUNICATIONS COMMISSION
445 12th STREET, S.W.
WASHINGTON DC 20554

MAR 08 2011

MEDIA BUREAU
AUDIO DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: www.fcc.gov/mb/audio

PROCESSING ENGINEER: Bernard Gorden
TELEPHONE: (202) 418-2700
MAIL STOP: 1800B2-BG
E-MAIL ADDRESS: Bernard.Gorden@fcc.gov

Lorenz E. Proietti
911 Colonial Drive
Cheyenne, WY 82001

Re: KMQS(FM), Wheatland, Wyoming
Facility Identification Number: 166044
Lorenz E. Proietti
File No: BPH-20100104AAK

Dear Applicant:

This refers to the community of license application, as amended October 12, 2010 filed by Lorenze E. Proietti ("Proietti"), licensee of Station KMQS(FM), Wheatland, Wyoming, requesting to modify the license for Station KMQS(FM), Channel 293A, Wheatland, Wyoming, to The Buttes, Wyoming, as its first local service. White Park Broadcasting, Inc. ("White Park") filed an Informal Objection. For the reasons set forth below, we are dismissing the application.

Background. The application was filed pursuant to Section 73.3573(g) of the Commission's rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file a competing expression of interest. Any reallocation proposal must result in a preferential arrangement of allotments.¹ We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.² This application would provide a first local transmission service to The Buttes, Wyoming under Priority (3).

In its Informal Objection, White Park states that The Buttes is not a community for allotment purposes. White Park contends that The Buttes does not have any civic, cultural, religious, social, or commercial entities that would constitute it as a community for allotment purposes. In this regard, White Park submitted statements from David J. Van Oss, President of The Buttes Homeowners' Association, Doug Bryant, Planning Director of Albany County Planning Office, and William and Danette Keadle, residents of The Buttes. Each statement states that The Buttes is a residential subdivision located south of Laramie. In addition, there are no businesses, churches or schools located within the subdivision, and the residents of The Buttes rely completely on the city of Laramie for employment, goods, and services. White Park requests dismissal of the application because The Buttes is not a community for allotment purposes.

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License ("Community of License")*, Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094 (1990).

² *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

Discussion. Accordingly, we are dismissing the Station KMQS(FM) community of license application, proposing The Buttes, Wyoming, as the station's new community of license. In doing so, we find that Prioretti has not demonstrated that The Buttes is a community for allotment purposes. The Commission has defined a community as geographically identifiable population groupings, which have common local interests.³ The test for determining whether a locality is a community is not a stringent one.⁴ This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census. Incorporation, however, is not a prerequisite to community status. The key factor in determining the existence of a community is the presence of a community of interest associated with an identifiable population grouping separate and distinct from all others and that the boundaries of the location do not enclose areas or populations more logically associated with some other location. A mere geographical location is not enough. There must be a clearly established, separate and distinct community with palpable political, economic and social needs that a radio station can address. The principal test is whether the residents function as and conceive themselves as a community around which their interests coalesce. This may be proven by direct testimony of residents of the locality and by various community indicia. These could include separate municipal services and institutions, or significant political, commercial, social and/or religious organizations and services serving the residents.

Prioretti states that The Buttes is listed in the 2000 U.S. Census as a Census Designated Place ("CDP") with a population of 31 persons. However, the designation of an area as a CDP raises the presumption that an area is a community for allotment purposes, that presumption is rebuttable.⁵ Prioretti states that The Buttes has one school, and several retail businesses. However, Prioretti has not specifically identified these entities or shown that they are intended to serve the needs of The Buttes, as opposed to the nearby city of Laramie. This is a critical deficiency because, in past cases, the Commission has rejected claims of community status where a nexus has not been shown between the political, social, and commercial organizations and the community in question.⁶ The Commission's policy is that, if a community is not incorporated or listed in the census reports, the proponents of an allotment must show the place to be a geographically identifiable population grouping. The proponent needs not show that the borders of the locality are precisely ascertainable. Instead, what must be shown is that residents of the locality are commonly regarded as a distinct group. In *Beacon Broadcasting*,⁷ the Commission stated that this can be proven by the "testimony of local residents or by objective indications of the existence of a common perception that a locality's populace constitutes a distinct 'geographical population grouping'". Examples of objective indications of community status include receipts from local businesses, photographs of local churches, the existence of political, commercial, social and religious organizations, and services in the community. Another indication of community status is "whether the residents function as and conceive of themselves as residents of a community, around which their interests coalesce.

³ See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88, 98 (1982).

⁴ See *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 3469 (1987), *aff'd sub nom*; see also *New South Broadcasting Corp. v FCC*, 879 F. 2d 867 (D.C. Cir 1989).

⁵ See *Stock Island, Florida*, Report and Order, 8 FCC Rcd 343 (M.M. Bur. 1993); *East Hemet, California, et al.*, Report and Order, 4 FCC Rcd 7895 (M.M. Bur. 1989); and *Hannahs Mill and Milledgeville, Georgia*, Report and Order, 7 FCC Rcd 3944 (M.M. Bur. 1992)(stating that a U.S. Census designation of an area as a CDP raises the presumption that an area is a "community" for allotment purposes, that presumption is rebuttable.

⁶ See *Gretna, Marianna, Quincy and Tallahassee, Florida*, Report and Order, 6 FCC Rcd 633 (1991) and *Malone and Owls Head, New York*, Report and Order, 3 FCC Rcd 5243 (1988)(rejecting claims of community status where a nexus has not been shown between the political, social, and commercial organizations and the community in question).

⁷ *Id* note 4.

Based on the showing submitted by Proietti, we find that The Buttes is not a community for allotment purposes. In this regard, Proietti has failed to identify any businesses or political, social and commercial organizations which identify themselves with The Buttes. Nor has Proietti provided testimony of local residents attesting to Proietti's community status.⁸ We conclude that the record is insufficient to find that The Buttes is a community for allotment purposes.

The July 12, 2010 letter from the Audio Division stated that pursuant to Section 73.3522 of the Commission's Rules⁹, "... an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff." Additionally, Section 73.3564 of the Commission's Rules¹⁰ states that "[a]pplications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment." See Appendix B in the Report and Order in MM Docket No. 91-347. The July 12, 2010 letter provided KMQS its 30 day period to submit a corrective amendment pursuant to Section 73.3522(c)(2). In response to that letter, the applicant filed an amended application for a change of city of license to a different community than that which was originally requested. However, this request, as discussed above, does not meet community standards for allotment purposes.¹¹ Therefore, application BPH-20100104AAK, remains in violation of Section 73.3573(g) after the 30 day period to file a corrective amendment and will be dismissed.

Therefore, in light of the above, application BPH-20100104AAK is unacceptable for filing and is HEREBY DISMISSED. The informal objection filed by White Park Broadcasting, Inc. IS GRANTED. This action is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,



Rodolfo F. Bonacci
Assistant Chief
Audio Division
Media Bureau

cc: A. Wray Fitch III
Barry A. Friedman

⁸ See *Semora, North Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 934 (1990).

⁹ 47 C.F.R. § 73.3522.

¹⁰ 47 C.F.R. § 73.3564.

¹¹ *Id* note 8.